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September 29, 2004

The Honorable Bryant L. Van Brakle  
Secretary  
Federal Maritime Commission  
800 North Capitol Street NW  
Washington, DC 20573

Subj: Response to Motion for Leave filed on August 2, 2004, by  
the National Industrial Transportation League, United Parcel  
Service, Inc., BAX Global Inc., FedEx Trade Networks Transport  
& Brokerage, Inc., Transportation Intermediaries Association, C.H.  
Robinson Worldwide, Inc., and BDP International, Inc., pursuant to  
Petitions P3-03, P5-03, P7-03, P8-03, P9-03, P1-04, P2-04, P4-04

**Via e-mail**

We write with regards to the above referenced matter which is currently before the Commission in a variety of different fashions. We are an OTI / NVOCC operating in Schiller Park, Illinois, in the suburbs of Chicago. Annually, we are involved in the movement of between one thousand and fifteen hundred shipments into or out of the United States.

We are aware of the Motion which was filed by the above-named entities and their goal of seeking an expeditious decision in the matter of granting service contracting authority to NVOCCs. We realize that this is a petition which is not endorsed by the National Customs Brokers and Forwarders Association of America (NCBFAA), who seek broader relief through an exemption to the tariff filing requirements and do not see the necessity to grant NVOCCs service contracting authority.

As a small to medium sized firm, the burdens of corporate compliance for maintaining a tariff are already great in terms of hard and soft dollars. It costs us money every time we file a rate, amend a rate or amend the rules of our tariff. Additionally, we pay annual administrative fees for the maintenance of our tariff. As we stated in our response to petitions P5-03 (NCBFAA) and P9-03 and P8-03 (CH Robinson and BAX Global, respectively) in our letter dated October 2, 2003, we have yet to have any shipper look at our tariff. We also must exercise compliance controls in an area where the day-to-day market pressures of moving cargo cause unexpected and untimely disruptions in the work flow of our staff.

The relief sought by the petitioners in their motion (the granting of service contracting authority) will only further legislate, regulate and add an additional level of complexity to the issue. While the large entities who signed onto the motion may be able to “lock in” their customers on a contractual basis, most small to mid-size shippers will not only balk, but will run from any attempt to make them contractually accountable to an NVOCC, especially where the matter of dead freight penalties for unmoved cargo present themselves. Further, we would then be responsible for the administration, filing and amending of these service contracts, a far more cumbersome task than what we already have to manage, which is by itself not inconsequential.

In today’s market, in fact in our own firm, negotiations between ourselves and shippers take place primarily through written correspondence. More specifically, it takes place by e-mail the overwhelming majority of the time. The typical process is:

- A shipper will contact us requesting rates between two points.
- We will consult our existing contracts or go to a VOCC or NVOCC co-loader for a bullet rate.
- We make a rate offer to the shipper. If the shipper accepts it, we file the rate in our tariff and request that our carrier partner do the same.
- The shipper may come back to us shortly before the cargo moves and states that they have a different offer (less money, different routing, different service level) from another NVOCC and asks us if we would like to amend our offer to match or improve upon their best offer.
- This necessitates us going back to the carrier who must also get authorization to provide a new rate, file another amendment and move onwards.
- All of these changes happen in hours, while the tendering of offers and the filing of service contracts or amendments happen in days.
- The possibility exists, and it has happened in the past, where due to a last-minute change, the cargo cannot be moved at the rate agreed to between ourselves and the VOCC or co-loading NVOCC (rate not filed, cargo tendered early) and must be moved at tariff. The shipper is not interested in this matter of legality and will demand that we honor the rate offered and filed in our tariff. We then must absorb the difference between the negotiated contract rate and the published tariff rate, the latter of which is invariably higher.

The memorialization of tariff rates was important in an environment of common carriage where rates and services were a matter of public record. By the Commission’s own estimations, the overwhelming majority of cargo now moves under confidential contracts. As such, this environment offers no transparency and shippers go from service provider to service provider to procure rates. Without filing a rate in a tariff, a rate is still memorialized between a shipper and an NVOCC and certainly if that shipper feels violated, they can take the written offer from the NVOCC to the Commission for the filing of a complaint and subsequent adjudication.

We believe at the end of the day that the petition put forth by the NCBFAA offers the best solution for all NVOCC's. It reduces costs which allow NVOCCs the ability to reinvest those funds in their businesses to advance their technology or customer service. Furthermore, an exemption from tariff filing does not unduly harm or burden anyone in the industry, regardless of size. If anything, it will allow the market to move even faster and allow decisions to happen more freely. Today's business trends are to move more swiftly and with greater economy. Granting the NCBFAA's petition will afford NVOCCs the opportunity to do just that.

Respectfully submitted,

**Scott A. Case**

Digitally signed by Scott A. Case  
DN: CN = Scott A. Case, O = VeriSign,  
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